

IN THE MATTER OF	:	BEFORE THE
TATYANA BAYTLER	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 06-047V

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DECISION AND ORDER

On February 26, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Tatyana Baytler, Petitioner, for a variance to reduce the 50-foot setback from an arterial right-of-way to 35 feet for a proposed single-family detached dwelling to be located in an R-20 (Residential - Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas M. Meachum, Esquire, represented the Petitioner. Tatyana Baytler appeared in support of the petition. Katherine L. Taylor, Esquire, represented adjoining landowner, Vincent Serio. Vincent Serio, James Jaecksch, Susan Mitchell, A. Warner Anderson and Robert Behrens testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, located in the 2nd Election District on the southeast corner of the Orchard Avenue intersection with Rogers Avenue (MD Route 99), is identified as Tax Map 17, Grid 12 as Parcel 742 (the “Property”). The Property is unimproved and has no current address.

The Property is a long and narrow, somewhat triangular-shaped, lot consisting of approximately 1.42 acres in area. This property was created by Howard County as surplus land from what was determined to be excess right-of-way for MD Route 99 and Orchard Avenue. The lot has approximately 153 feet of frontage on Orchard Avenue and approximately 678 feet of frontage along MD Route 99. The adjoining property to the south is improved with a single-family detached dwelling fronting on Old Frederick Road. Across MD Route 99 to the north is Open Space Lot 1 which is zoned R-ED and is used for the Hollifield Station Elementary School, a public school facility; Lot H which is zoned R-SC and is a vacant lot; and Open Space Lot 311 which is unimproved. The topography of the Property is relatively flat but is elevated above MD Route 99 approximately 5 feet.

2. The Petitioner, the owner of the Property, proposes to construct a 2,620 square foot single-family detached dwelling towards the southwest end of the Property. As proposed, the dwelling will be located approximately 50 feet from the Orchard Avenue public street right-of-way and approximately 35 feet 8 inches from the MD Route 99 arterial right-of-way. The dwelling would, therefore,

encroach approximately 14 feet 4 inches into the MD Route 99 50-foot setback required by Section 108.D.4.b(1)(a)(ii).

3. Vicinal properties on the south side of MD Route 99 are also zoned R-20. Uncontradicted testimony offered by the Petitioner indicated that the Property's building envelope is narrower than most of the properties in the area. The square footage of the Petitioner's proposed dwelling is typical in size of vicinal houses. Petitioner provided evidence that Townhouses in the Daniels Mill Overlook subdivision across MD Route 99 range in square footage from 2,512 square feet to 3,030 square feet. Therefore, a single-family detached home within this range would certainly seem to be a reasonable use.

4. Ms. Baytler testified that the house will be within the widest part of the property and that the proposed floor plan shows the house will be designed to go front to back, rather than across, to minimize the width of the house. According to the Petitioner's Exhibit 2, Petitioner sought out and found house plans specifically designed for narrow lots. Ms Baytler further testified that the house location observes the setback requirement from the adjoining property to the south, Parcel 630, and the Orchard Avenue public street right-of-way. It was suggested that the proposed setback intrusion is in the direction of the least impact on vicinal properties, in the direction of MD Route 99 and that, as shown on the proposed home plan, evergreen tree landscaping will be planted both in front of the property along Orchard Avenue and on the north side of the property, extending approximately 205 feet along Route 99, to buffer the visibility of the property and enhance the appearance of the area. Access to the Property is proposed to be

gained via a paved driveway that runs from the front of the dwelling to a point on Orchard Avenue approximately 138 feet from the intersection of Orchard Avenue and MD Route 99. As proposed, the driveway would have 20 feet of frontage on Orchard Avenue.

5. Vincent Serio testified that based on documentation he received from the Department of Planning and Zoning, the property may be narrower than represented by the Petitioner and may be too narrow to be used as a residential building lot. Mr. Serio also expressed concern that the ingress and egress location of the proposed driveway along Orchard Avenue may not provide safe access to the property which may be detrimental to the public welfare. The reason he offers in support of his conclusion that the driveway access on Orchard Avenue will increase the potential for accidents relates solely to the use of Orchard Avenue by school buses. Mr. Serio offered, as Opponent's Exhibit 11, photographs that showed school buses traveling along that portion of Orchard Avenue where the proposed driveway would connect. Mr. Serio admitted that the photographs were taken at various times of the day and that no specific times or dates for the photographs could be provided. Precise traffic volume studies and sight distance measurements for that portion of Orchard Avenue were not provided. Mr. Serio opinion is unsupported by any specific facts which would lead to the conclusion that the minimal traffic which would be generated by vehicles entering and exiting the subject property due to the granting of the requested variance would probably result in accidents. In short, Mr. Serio's testimony is too vague and generalized to be accorded any probative value.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

1. Unique Physical Condition. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical

difficulty in complying with the particular bulk zoning regulation. This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The Property is one of the narrower in the neighborhood. In addition, because it is located at the intersection of a public street and an arterial road, the resulting building envelope is significantly narrower than any other lot in the vicinity. Indeed, it is hard to imagine how any reasonably sized single-family dwelling could fit within the current building envelope due to the narrowness of the buildable area of the lot. Consequently, I find that the narrowness of the property is a unique physical condition that cause the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. Effect of Variance on Character of the Neighborhood and Public Welfare. Although opponents testified that a two-story detached residential dwelling would be out of character for a neighborhood consisting primarily of one-story residential dwellings, it was admitted that some two-story detached residential dwellings do exist in the area. It was also suggested that having a

detached single family residential dwelling on a slightly elevated lot within approximately 45 feet of MD Route 99, would be out of place and alter the character of the neighborhood. Of the five witnesses testifying against the Petition, four admitted that they had not seen a rendering of the proposed dwelling. I see no need to enter into a prolonged discourse in which I summarize the opponent's testimony. The opponents' evidence amounted to unsupported concern and fear of the project. The provisions relating to property zoned R-20 (Residential - Single) are found in Section 108 of the Zoning Regulations. One of the uses permitted as a matter of right is one single-family detached dwelling unit per lot. Section 108.B.1. The proposed single family detached dwelling will be used for permitted residential purposes in an R-20 Zoning District and will not change the residential nature or intensity of the use. Although it was vigorously argued by the adjoining landowner's counsel that permitting the driveway to connect with Orchard Avenue would be a menace to the public safety and welfare, granting the variance to reduce the setback from an arterial right-of-way would not grant the right to connect the driveway with Orchard Avenue. That would be an issue to be decided by a separate authority. I, therefore, find that the variance, if granted, will not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. Practical Difficulty or Hardships Not Created by the Owner. The practical difficulty in complying strictly with the setback regulation arises from

the shape of the Property and was not created by the Petitioner. In the absence of the requested variance, the property would be difficult to use as a residential dwelling lot. Within the intent and purpose of Section 130.B.2.a(3), the Petition complies with the regulation.

4. Minimum Variance Necessary to Afford Relief. The proposed dwelling will be located in the only area practical to locate a residential dwelling due to the narrowness of the Property. Within the intent and purpose of the regulations then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

Based upon the foregoing Findings of Fact, and for the reasons stated above, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

ORDER

Based upon the foregoing, it is this **day of**
2007, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Tatyana Baytler for a variance to reduce the 50-foot setback from an arterial right-of-way to 35 feet for a proposed single-family detached dwelling to be located in an R-20 (Residential - Single) Zoning District is hereby **GRANTED**;

Provided, however, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Ernest Stokes, Esq, LC

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.